

4525

1 BILL NO. G-79-08-18

2 GENERAL ORDINANCE NO. G-

38-86

3 AN ORDINANCE amending General Ordinance
4 No. G-97 by authorizing the vacation of
a portion of Berry Street.

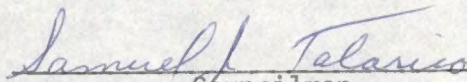
5 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,
6 INDIANA:

7 SECTION 1. Petition for the vacation of a certain street having
8 been filed with the Fort Wayne City Plan Commission in accordance with
9 Section 44, Chapter 174, of the Acts of the General Assembly of the State
10 of Indiana, as amended by Section 3, Chapter 385, of the Acts of 1963 of
11 the General Assembly of the State of Indiana (I.C. 18-7-5-46), the
12 Thoroughfare Plan as set forth in General Ordinance No. G-97 adopted by
13 the Common Council of the City of Fort Wayne on November 26, 1963, is
14 amended by deleting the following street, to wit:

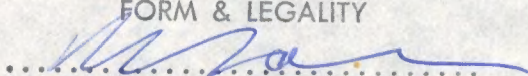
15 A public street, known as Berry Street, running
16 from Broadway on the east to Van Buren Street
17 on the west, which said public street is in
the City of Fort Wayne, Indiana, being in
18 Rockhill's Amended Addition, Fort Wayne, Allen
County, Indiana.

19 SECTION 2. After passage of this Ordinance, approval by the
20 Mayor and legal publication, a duly certified copy of this Ordinance, of
21 the recommendation of the Fort Wayne City Plan Commission, and of the
22 action of the Mayor, shall be transmitted by the City Clerk to the Board
23 of Public Works of the City of Fort Wayne, Indiana.

24 SECTION 3. That this Ordinance shall be in full force and effect
25 from and after its passage, approval by the Mayor and legal publication
26 thereof.

27 
28 Councilman

29
30
31 APPROVED AS TO
FORM & LEGALITY

32 
William N. Salin, City Attorney

Mr. President.

I was on the
prevailing side and
moved to reconsider
and enter on the minutes.
on bill
G 79-0818

Janet Bradbury

Vote to reconsider vote on G-79-08-18

Read the first time in full and on motion by _____,
seconded by _____, and duly adopted, read the second time
by title and referred to the Committee _____ (and the City
Plan Commission for recommendation) and Public Hearing to be held after
due legal notice, at the Council Chambers, City-County Building, Fort Wayne,
Indiana, on _____, the _____ day of
_____, 19____, at _____ o'clock _____ M., E.S.

DATE: _____

SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by _____,
seconded by _____, and duly adopted, placed on its
passage. PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>2</u>	<u>5</u>	<u>2</u>	_____	_____
<u>BRADBURY</u>	<u>✓</u>	_____	_____	_____	_____
<u>BURNS</u>	_____	<u>✓</u>	_____	_____	_____
<u>EISBART</u>	_____	<u>✓</u>	_____	_____	_____
<u>GIAQUINTA</u>	_____	_____	<u>✓</u>	_____	_____
<u>HENRY</u>	_____	_____	<u>✓</u>	_____	_____
<u>REDD</u>	_____	<u>✓</u>	_____	_____	_____
<u>SCHMIDT</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	_____	<u>✓</u>	_____	_____	_____
<u>TALARICO</u>	_____	<u>✓</u>	_____	_____	_____

DATE: 12-2-86

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort
Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)
(SPECIAL) (ZONING MAP) ORDINANCE (RESOLUTION) NO. _____
on the _____ day of _____, 19____,

ATTEST:

(SEAL)

SANDRA E. KENNEDY, CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana,
on the _____ day of _____, 19____,
at the hour of _____ o'clock _____ M., E.S.T.

SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this _____ day of _____,
19____, at the hour of _____ o'clock _____ M., E.S.T.

WIN MOSES, JR., MAYOR

Read the first time in full and on motion by _____,
seconded by _____, and duly adopted, read the second time
by title and referred to the Committee _____ (and the City
Plan Commission for recommendation) and Public Hearing to be held after
due legal notice, at the Council Chambers, City-County Building, Fort Wayne
Indiana, on _____, the _____ day of
_____, 19____, at _____ o'clock _____ M., E.S

DATE: _____

SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by E. isart,
seconded by Stier, and duly adopted, placed on its
passage. PASSED (~~LOST~~) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>6</u>	<u>1</u>	<u>2</u>	_____	_____
<u>BRADBURY</u>	<u>✓</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>✓</u>	_____	_____	_____	_____
<u>GIAQUINTA</u>	_____	_____	<u>✓</u>	_____	_____
<u>HENRY</u>	_____	_____	<u>✓</u>	_____	_____
<u>REDD</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT</u>	_____	<u>✓</u>	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 11-25-86.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort
Wayne, Indiana, as (ANNEXATION) (~~APPROPRIATION~~) (~~GENERAL~~)

(~~SPECIAL~~) (~~ZONING MAP~~) ORDINANCE (RESOLUTION) NO. 9-38-86

on the 2nd day of December, 1986,

ATTEST

(SEAL)

Sandra E. Kennedy

Samuel J. Talarico

SANDRA E. KENNEDY, CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana,
on the 3rd day of December, 1986,
at the hour of 10:00 o'clock 9 M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 4th day of December,
1986, at the hour of 100 o'clock P M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR., MAYOR

Read the first time in full and on motion by Delaney, seconded by Stier, and duly adopted, read the second time by title and referred to the Committee on Regulations (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chamber City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATE: 8-14-79

Charles W. Winterman
CITY CLERK

Read the third time in full and on motion by _____, seconded by _____, and duly adopted, placed on its passage.

PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	_____	_____	_____	_____	_____
<u>BURNS</u>	_____	_____	_____	_____	_____
<u>HINGA</u>	_____	_____	_____	_____	_____
<u>HUNTER</u>	_____	_____	_____	_____	_____
<u>MOSES</u>	_____	_____	_____	_____	_____
<u>NUCKOLS</u>	_____	_____	_____	_____	_____
<u>SCHMIDT, D.</u>	_____	_____	_____	_____	_____
<u>SCHMIDT, V.</u>	_____	_____	_____	_____	_____
<u>STIER</u>	_____	_____	_____	_____	_____
<u>TALARICO</u>	_____	_____	_____	_____	_____

DATE: _____

CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as
(ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE
(RESOLUTION) No. _____ on the _____ day of _____, 19____.
ATTEST: (SEAL)

CITY CLERK

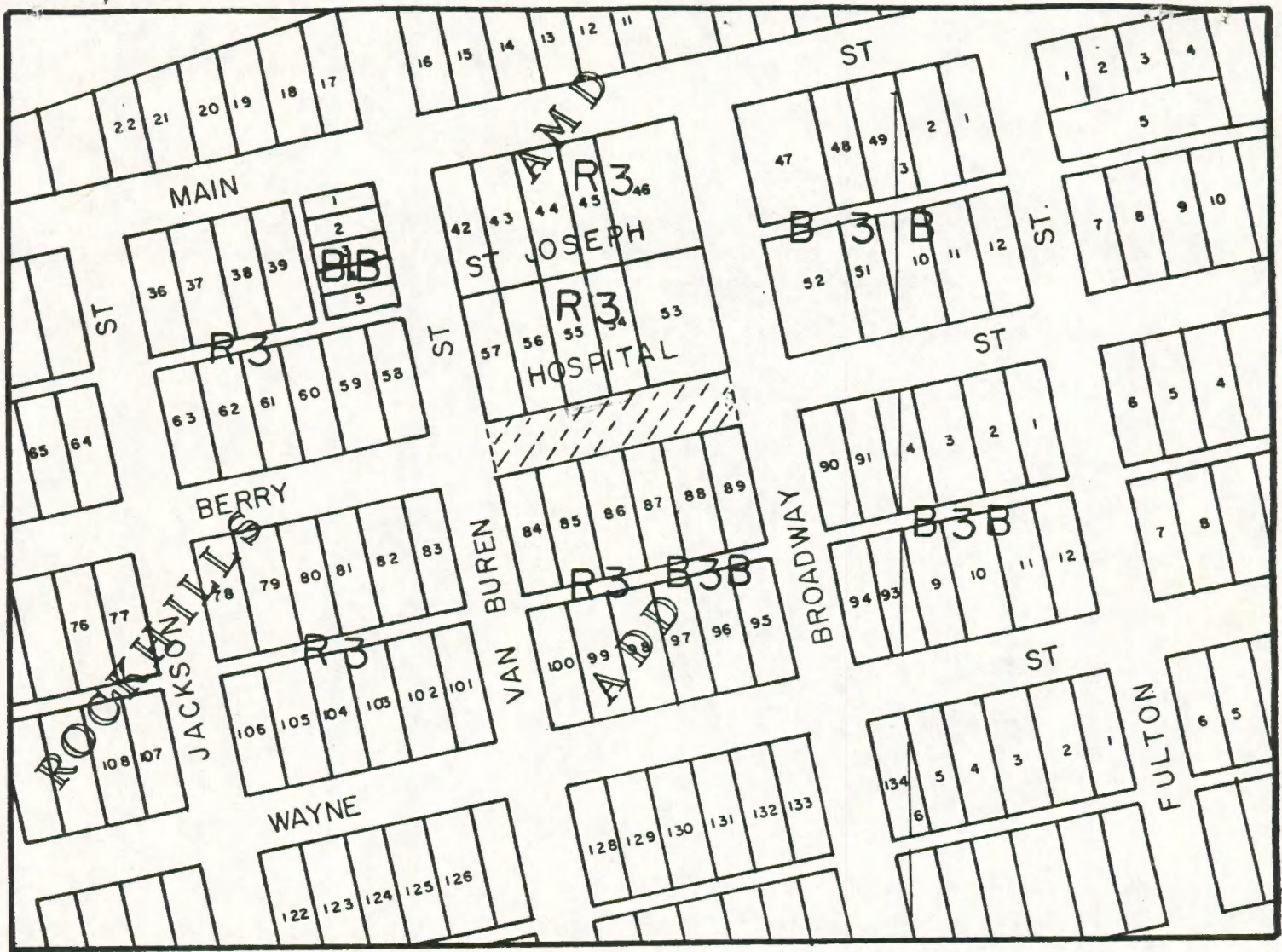
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day of _____, 19____, at the hour of _____ o'clock _____ M., E.S.T.

CITY CLERK

Approved and signed by me this _____ day of _____, 19____
at the hour of _____ o'clock _____ M., E.S.T.

MAYOR



PORTION OF STREET TO BE VACATED

Map No. L-6

Change of Zone #183

Bill No. G-79-08-18



Page two

4) The existing street should be closed except for emergency vehicles. The closure -- and you can help me form this language -- to be a conditional right-of-way encroachment which can be reversed by the Board of Works at any time it so deems fit.

Steve Smith seconded the motion.

Ben Eisbart asked for discussion.

Steve Smith questioned if it were proper for the Chair to make the motion.

Motion to approve was done by a roll call vote.

Ben Eisbart - yea

Duane Embury - yea

Herman Friedrich - nay

Robert Hutner - nay

Edith Kenna - nay

Daivd Kiester - yea

John Shoaff - yea

Mel Smith - nay

Steve Smith - yea

Motion to approve carried with 5 - yeas and 4 - nays. Of the nine members present 5 voted in favor and 4 voted against approval of the vacation.

NOTE: Staff has received, from the City Attorney's Office, a copy of the signed agreement between the Board of Public Works and St. Joseph Medical Center. The agreement covers all conditions imposed by the City Plan Commission except for the one which deals with approval of the site plan. In the interest of moving this matter along to City Council, staff would require that the development is to be approved by Traffic Engineering, Street Engineering and the CD&P Landscape Architect prior to the beginning of construction.

AGREEMENT

THIS AGREEMENT, made and entered into this 22nd day of October, 1986, by and between the CITY OF FORT WAYNE, INDIANA, by and through its BOARD OF PUBLIC WORKS AND SAFETY ("City"), and ST. JOSEPH'S HOSPITAL OF FORT WAYNE, INC., d/b/a ST. JOSEPH MEDICAL CENTER OF FORT WAYNE ("Medical Center"),

W I T N E S S E T H :

WHEREAS, the Medical Center has requested that the City vacate a portion of Berry Street, bounded on the east by Broadway Street and bounded on the west by Van Buren Street ("Property"); and

WHEREAS, vacation approval has been granted or will be granted, subject to the City and the Medical Center entering into an agreement, with respect to the closure of the Property; the construction of improvements thereon; and other conditions regarding same; and

WHEREAS, the parties desire to enter into this Agreement to clarify and memorialize the understanding between them respectively.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. Once the vacation request, as made by the Medical Center has been approved, that portion of Berry Street bounded by Broadway Street on the east and Van Buren Street on the west, as so indicated in the Petition for Vacation, shall be closed subject to the terms and conditions of this Agreement. That is, even though the appropriate portion of Berry Street (Property) shall be deemed to be vacated, such vacation and the Medical Center's right with respect to such Property, shall be subject to all of the provisions hereof.

2. The Medical Center is authorized to make improvements consistent with those as indicated on the attached Exhibit "A", made a part hereof. The cost of such improvements and the maintenance of same shall be the sole responsibility of the Medical Center. The Medical Center does hereby agree to indemnify and hold harmless the City and all of its employees, departments, boards and commissions, from and against any liability of any kind or character, including but not limited to injury to person, damage to property and attorneys' fees, occasioned by or resulting from the construction and maintenance of the improvements and the use of the Property. The Medical Center shall maintain general liability insurance in the primary amount of not less than One Million Dollars (\$1,000,000.00). The City may request, from time to time, certificates of insurance evidencing such coverage.

3. The closed portion of Berry Street shall be closed to the public, as a vacated street, for a period of twenty-five (25) years from the date the vacation petition has received final legal approval. Upon the expiration of the twenty-five (25) years, all rights to the street shall revert to the City and the street may be opened if the City so desires. In addition, the City may terminate the closure within the twenty-five (25) years, if same is determined to be in the City's best interest. If such earlier termination occurs, the City shall reimburse the Medical Center for improvements made, with the City's payment being in the first year (if a termination is made in the first year) of One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00). The reimbursement shall be reduced by Six Thousand and no/100 Dollars (\$6,000.00) each year that the Agreement is not terminated. Thus and by way of example, if the Agreement is terminated after five (5) years, the City's payment to the Medical Center would be One Hundred Twenty Thousand and no/100 Dollars (\$120,000.00).

4. The Medical Center's use of the Property and the closure of that portion of Berry Street shall not limit City emergency and other emergency vehicle access to the Medical

Center and any other contiguous facility of the Medical Center, in the event of an emergency at the Medical Center or such contiguous facility of the Medical Center.

5. The Medical Center shall provide all necessary utility easements, including a pedestrian easement and, utility access shall be unencumbered.

6. This Agreement shall be subject to the laws of the State of Indiana and shall be binding upon all successors and assigns.

IN WITNESS WHEREOF, this Agreement has been signed the day, month and year first above written.

CITY OF FORT WAYNE, INDIANA
by its BOARD OF PUBLIC WORKS
AND SAFETY

BY: *James Haley*

BY: *Robert R. Intz*

BY: *J.D. Conzelmann*

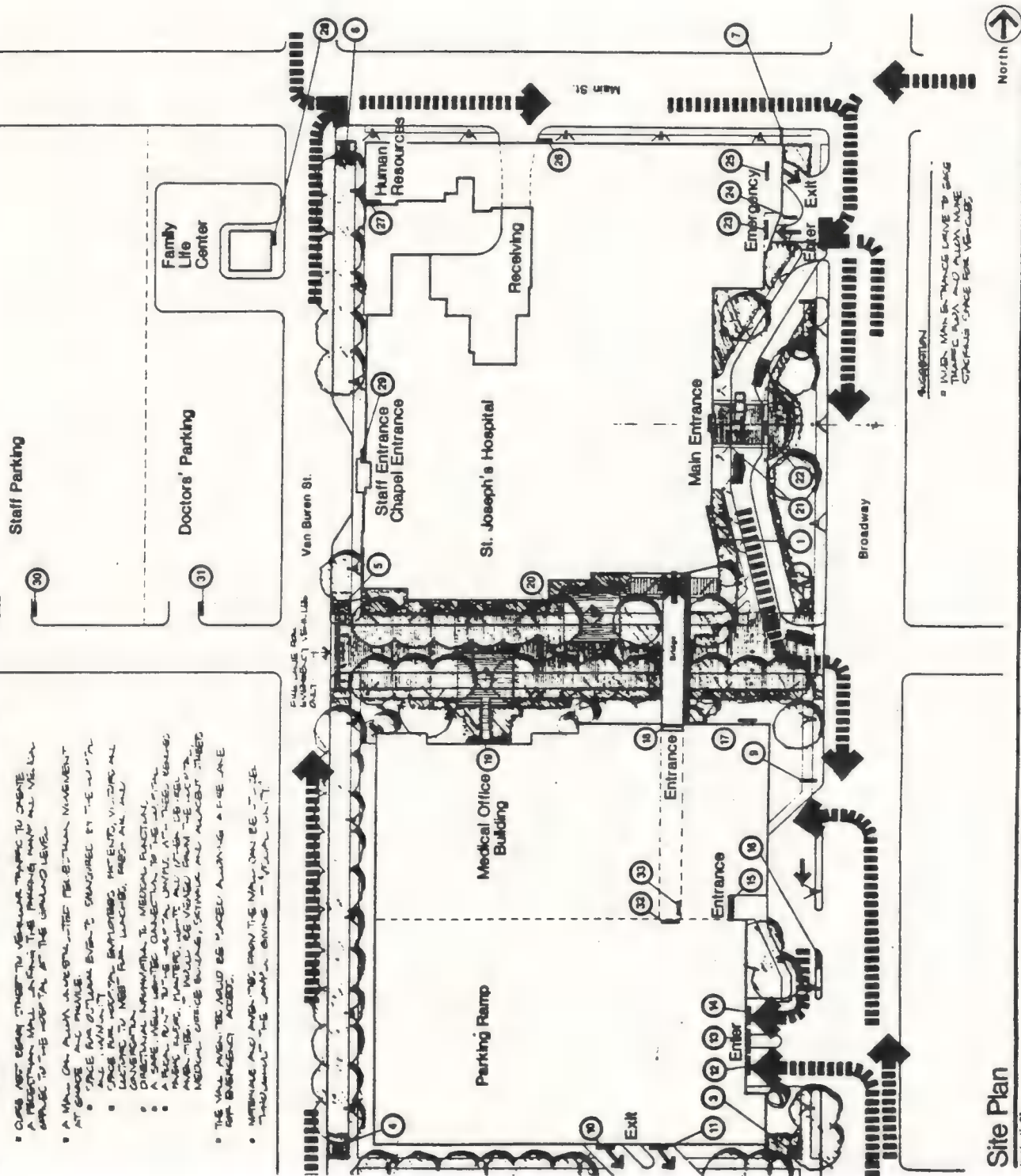
ST. JOSEPH'S HOSPITAL OF FORT
WAYNE INC., d/b/a ST. JOSEPH
MEDICAL CENTER OF FORT WAYNE

BY: *Stanley A. Abramowski Jr.*

Stanley A. Abramowski, Jr.,
Executive Director

pedestrian mall concept:

- [illegible]



Site Plan

Aug. 15, 1902.

Division of Community Development & Planning

0-19-00-10

BILL NUMBER

BRIEF TITLE

APPROVAL DEADLINE

REASON

Street Vacation Ordinance

DETAILS

Specific Location and/or Address

Berry Street between Broadway and
VanBuren Street

Reason for Project

In order to convert this portion of street
into a park like setting to enhance the
hospital.

Discussion (Including relationship to other Council actions)

Public Hearing - February 24, 1986

Russell Long, Vice-President of Business
Development at St. Joseph's Hospital
stated that they were requesting the vac-
ation in order to convert this portion of
Berry Street into a park like setting,
complete with landscaping, park benches with
a right-of-way, which is required for
emergency vehicles. He stated the reasons
for this request would be in order to allow
patients from the front entrance of the
hospital, which enter off of Broadway, to
come out and enter directly into the front
of the parking garage. He stated it is also
to provide a park like setting for the enjoy-
ment of the public and the neighborhood and
also to enhance the blending of a major
employer in this area with the neighborhood
in which it resides. He stated that they
have been supported in the endeavor by the
West Central Neighborhood Association going
back 6 years ago, when this was first applied
for, and as recently as a month ago. He
stated they have also met with Planning
Staff and the City Traffic Engineers. He
stated that they have heard all of the con-
cerns with regard to utilities also. He

POSITIONS

RECOMMENDATIONS

Sponsor

City Plan Commission

Area Affected

City Wide

Other Areas

Applicants/ Proponents

Applicant(s)

St. Joseph Hospital

City Department

Other

Opponents

Groups or Individuals

Basis of Opposition

Staff Recommendation

☒ For ☐ Against

Reason Against

Board or Commission Recommendation

By

☒ For ☐ Against

☐ No Action Taken

☐ For with revisions to conditio
(See Details column for conditio

CITY COUNCIL ACTIONS (For Council use only)

☐ Pass ☐ Other

☐ Pass (as
amended) ☐ Hold

☐ Council Sub. ☐ Do not pa

DETAILS

stated they intend to deal with all of the concerns.

Mel Smith questioned if Traffic Engineering had made a study or were going to, regarding the traffic usage of this portion of Berry Street.

Mr. Long stated that Walt Stout, Traffic Engineer, and his staff were doing a traffic count.

Mel Smith questioned if this would stop people from parking in the neighborhood, and cause them to use the parking garage and the parking lot provided by St. Joseph Hospital.

Mr. Long stated that this will not prohibit or stop people from parking the the area. He stated people will park on the street of their own volition.

Steve Smith questioned if the vacated area would still maintain a right-of-way that would be sufficient for emergency vehicles, such as fire trucks.

Mr. Long stated that yes it would. He stated they have not worked out all of the details but there are a couple of requirements that the City has made very clear that must be architecturally dealt with. He stated that it must be self-evident to any traffic coming up Berry Street that they cannot proceed through Berry Street. He stated also that the surface area of the provided right-of-way must be able to support a fire truck which has a weight of something like 20 tons.

Steve Smith asked that in addition to Traffic Engineering's comments regarding the traffic

POLICY/PROGRAM IMPACT

Policy or Program Change	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Operational Impact Assessment		

(This space for further discussion)

counts he would also like comments from t Fire Dept.

Edith Kenna asked that the traffic study being done be more than a count of the number of cars using this portion of Berry Street. She stated that the traffi study should also disclose what type of impact it will have on surrounding street that will have to pick up the traffic diverted because of the closing of this portion of Berry Street.

Mel Smith questioned why there were no comments on the Comprehensive Plan.

V.C. Seth, Director of Planning, stated that this portion of Berry Street does not deal with a major arterial. He stated that the vacation of this portion of street would not impact the Comprehensive Plan.

Business Meeting - March 24, 1986

The following is the an excerpt from the business meeting minutes on the motion which recommendation a DO PASS on the vacation ordinance.

Ben Eisbart: I would offer the following that a "Conditional Approval" be granted and that conditional approval include articles 1 thru 4 on page 29 - that's the staff recommendation. Contingent upon the following:

- 1) Petitioner is to provide utility easements as necessary.
- 2) Petitioner is to provide pedestrian easements.
- 3) Site plan review and approval is required from the following departments: Traffic Engineering, Street Engineering, and CD&P Landscape Architect.

Project Start

Date 3-28-79

Projected Completion or Occupancy

Date 10-24-86

Fact Sheet Prepared by

Date 10-24-86

Patricia Biancaniello

Reviewed by

Date

Dary Baxter

10/27/86

Reference or Case Number

4525

Admn. Appr. _____

ORIGINAL

DIGEST SHEET

ORIGINAL

TITLE OF ORDINANCE Street Vacation Ordinance

2-79-08-18

DEPARTMENT REQUESTING ORDINANCE Long Range Planning & Zoning - CD&P

SYNOPSIS OF ORDINANCE A public street, known as Berry Street, running from Broadway on the east to VanBuren Street on the west, which said public street is in in the City of Fort Wayne, Indiana, being in Rockhill's Amended Addition, Fort Wayne, Allen County, Indiana.

EFFECT OF PASSAGE Property is now a public right-of-way. Property will be closed for public use and revert to the abutting property owners.

EFFECT OF NON-PASSAGE Property will remain public right-of-way.

MONEY INVOLVED (Direct Costs, Expenditures, Savings) _____

ASSIGNED TO COMMITTEE (J.N.)

Regulations



The City of Fort Wayne

December 1, 1986

Members of the Common Council
of the City of Fort Wayne, Indiana
One Main Street
Fort Wayne, Indiana 46802

Re: Vacation of Berry Street
Bill No. G-79-08-18

Gentlemen and Mrs. Bradbury:

Questions have been raised by certain members of the Common Council concerning the validity of an Agreement entered into between the City of Fort Wayne, Indiana, by and through its Board of Public Works and Safety, and St. Joseph's Hospital of Fort Wayne, Inc., d/b/a St. Joseph Medical Center, Fort Wayne. This letter will hopefully clarify this Agreement and answer the questions which have been presented.

Attached to this letter is a copy of the Agreement referred to above. This Agreement contains five main points.

First, the Agreement and the Ordinance provide for a vacation of the street. That is, this is not a contingent or conditional closing of the street but does constitute a statutory vacation of Berry Street. As will be seen later, there are provisions in the Agreement which allow the City to retake the street but said rights in the City do not change the fact that the vacation is complete. Notwithstanding the vacation, the parties to the Agreement have made the other agreements as herein explained.

Second, the City has authorized St. Joseph Medical Center to make improvements as indicated on the Exhibit to the Agreement. The estimated cost of these improvements is \$150,000.00. The Medical Center indemnifies the City from any and all liability occasioned by or resulting from the construction of the improvements on the street.

Third, the parties have agreed that the street vacation will be for a limited term of years, namely, twenty-five years from the date the vacation Ordinance is approved. At the expiration of

Members of the Common Council
of the City of Fort Wayne, Indiana
December 1, 1986
Page Two

twenty-five years, the City will once again own the street and the City may open the street if it so desires. Additionally, the City has the right under the Agreement to take back the property at any time so long as the City compensates the Medical Center for the improvements made by the Medical Center. The Agreement provides that if the City retakes the property within the first year, the compensation to the Medical Center will be \$150,000.00 with said compensation being reduced by \$6,000.00 for each additional year that the Medical Center owns the property. Under State law, if this Agreement did not provide for the City's reacquisition of the street, the City would have to enter into condemnation proceedings, have the real estate and improvements appraised, and pay the average of the appraised prices. By agreeing beforehand to these matters, the City will save the expense of condemnation action if the City desires to take back the property within the twenty-five year period, and at the end of twenty-five years will not have to take any action to get the street back.

Fourth, the Medical Center has agreed that the improvements to the street shall be such that they will not limit City emergency and other emergency vehicles from having access to the Medical Center and any other contiguous facilities in the event of an emergency at the Medical Center. This was a specific requirement of the Plan Commission in granting its conditional approval. The Minutes of the Plan Commission meeting at which conditional approval was granted, provide that the existing street should be closed except for emergency vehicles and that the closure would be a conditional right-of-way encroachment reversible by the Board of Works at any time. The Minutes specifically state that the language "conditional right-of-way encroachment" is not a specific requirement but a form of direction to the parties to reach the agreement which was reached.

Fifth, the Medical Center has agreed to provide all utility easements, including pedestrian easement and must provide the utility access be unencumbered. This will allow the City Utilities, or other utilities, to enter onto the premises as necessary to make repairs or improvements without being liable to the Medical Center for damage to the improvements made by the Medical Center.

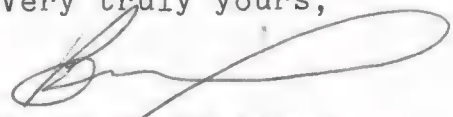
The City Attorney's office participated in the negotiation of this Agreement and is satisfied as to its form and legality.

Members of the Common Council
of the City of Fort Wayne, Indiana
December 1, 1986
Page Three

There are several statutory provision which allow the Board of Public Works and Safety and the City to vacate streets, regulate the use of public ways, provide for improvements or repairs to streets, alleys and other public places, such improvements including specifically "pedestrian ways or malls set aside entirely or partly, or during restricted hours, for pedestrian rather than vehicular traffic."

Finally, there has been some question concerning the enforceability of the Agreement. The Agreement has been approved by the Board of Public Works and Safety, by the Board of Directors of the St. Joseph Medical Center, and upon approval by the Common Council and the Mayor, will be a binding and valid obligation enforceable in accordance with its terms against the Medical Center. The Agreement does not have to be recorded in the Recorder's Office to make it enforceable. The vacation Ordinance itself is required by law to be recorded in the Recorder's Office and will put people on notice of the proceedings. Therefore, it is unnecessary to record the Agreement between the City and the Medical Center.

Very truly yours,



Bruce O. Boxberger
City Attorney (Corporate Counsel)
City of Fort Wayne, Indiana

BOB:ls

AGREEMENT

THIS AGREEMENT, made and entered into this 22nd day of October, 1986, by and between the CITY OF FORT WAYNE, INDIANA, by and through its BOARD OF PUBLIC WORKS AND SAFETY ("City"), and ST. JOSEPH'S HOSPITAL OF FORT WAYNE, INC., d/b/a ST. JOSEPH MEDICAL CENTER OF FORT WAYNE ("Medical Center"),

W I T N E S S E T H :

WHEREAS, the Medical Center has requested that the City vacate a portion of Berry Street, bounded on the east by Broadway Street and bounded on the west by Van Buren Street ("Property"); and

WHEREAS, vacation approval has been granted or will be granted, subject to the City and the Medical Center entering into an agreement, with respect to the closure of the Property; the construction of improvements thereon; and other conditions regarding same; and

WHEREAS, the parties desire to enter into this Agreement to clarify and memorialize the understanding between them respectively.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. Once the vacation request, as made by the Medical Center has been approved, that portion of Berry Street bounded by Broadway Street on the east and Van Buren Street on the west, as so indicated in the Petition for Vacation, shall be closed subject to the terms and conditions of this Agreement. That is, even though the appropriate portion of Berry Street (Property) shall be deemed to be vacated, such vacation and the Medical Center's right with respect to such Property, shall be subject to all of the provisions hereof.

2. The Medical Center is authorized to make improvements consistent with those as indicated on the attached Exhibit "A", made a part hereof. The cost of such improvements and the maintenance of same shall be the sole responsibility of the Medical Center. The Medical Center does hereby agree to indemnify and hold harmless the City and all of its employees, departments, boards and commissions, from and against any liability of any kind or character, including but not limited to injury to person, damage to property and attorneys' fees, occasioned by or resulting from the construction and maintenance of the improvements and the use of the Property. The Medical Center shall maintain general liability insurance in the primary amount of not less than One Million Dollars (\$1,000,000.00). The City may request, from time to time, certificates of insurance evidencing such coverage.

3. The closed portion of Berry Street shall be closed to the public, as a vacated street, for a period of twenty-five (25) years from the date the vacation petition has received final legal approval. Upon the expiration of the twenty-five (25) years, all rights to the street shall revert to the City and the street may be opened if the City so desires. In addition, the City may terminate the closure within the twenty-five (25) years, if same is determined to be in the City's best interest. If such earlier termination occurs, the City shall reimburse the Medical Center for improvements made, with the City's payment being in the first year (if a termination is made in the first year) of One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00). The reimbursement shall be reduced by Six Thousand and no/100 Dollars (\$6,000.00) each year that the Agreement is not terminated. Thus and by way of example, if the Agreement is terminated after five (5) years, the City's payment to the Medical Center would be One Hundred Twenty Thousand and no/100 Dollars (\$120,000.00).

4. The Medical Center's use of the Property and the closure of that portion of Berry Street shall not limit City emergency and other emergency vehicle access to the Medical

Center and any other contiguous facility of the Medical Center, in the event of an emergency at the Medical Center or such contiguous facility of the Medical Center.

5. The Medical Center shall provide all necessary utility easements, including a pedestrian easement and, utility access shall be unencumbered.

6. This Agreement shall be subject to the laws of the State of Indiana and shall be binding upon all successors and assigns.

IN WITNESS WHEREOF, this Agreement has been signed the day, month and year first above written.

CITY OF FORT WAYNE, INDIANA
by its BOARD OF PUBLIC WORKS
AND SAFETY

BY: James Haley

BY: Arthur R. Inge

BY: J.D. Connelley

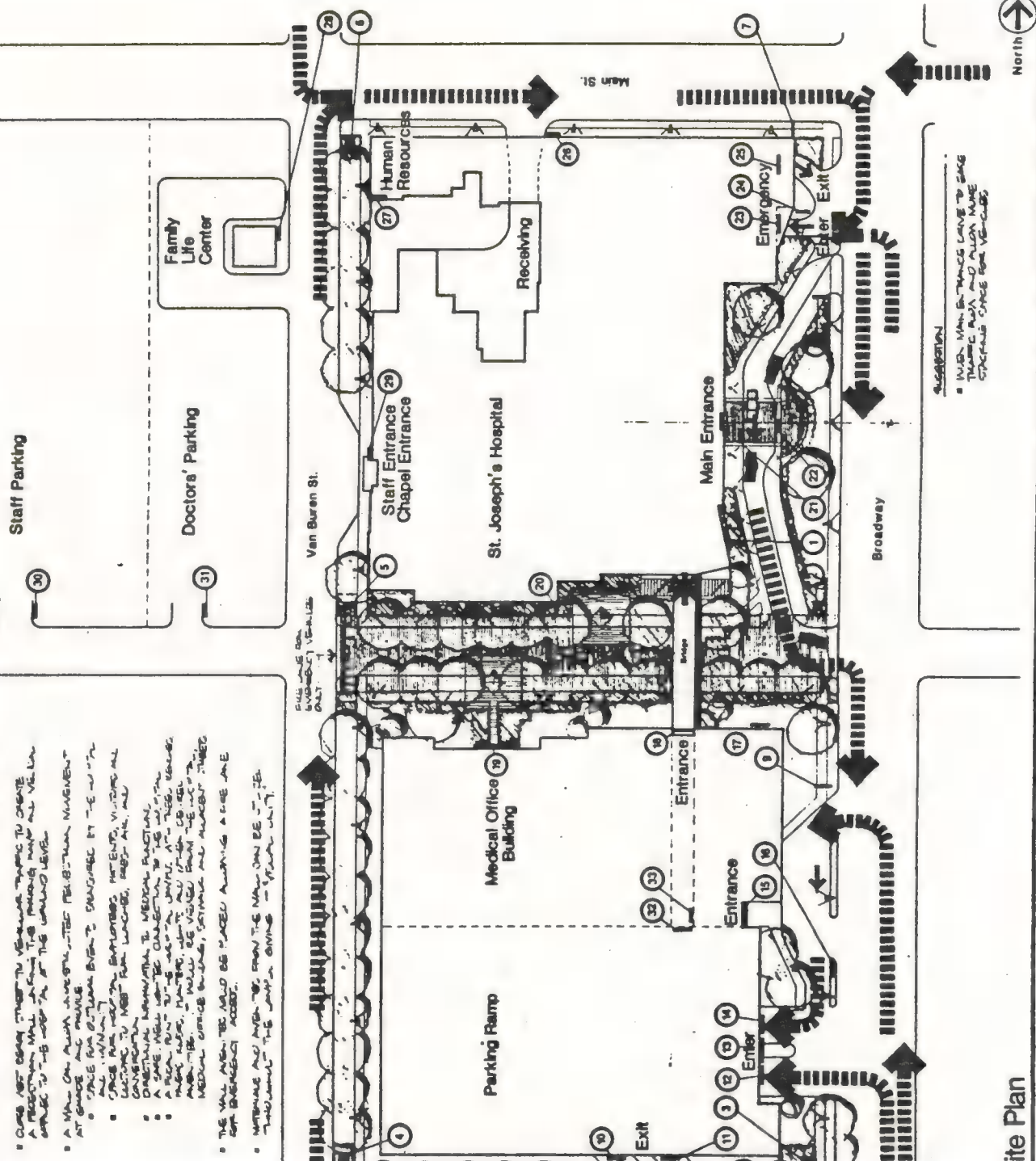
ST. JOSEPH'S HOSPITAL OF FORT
WAYNE INC., d/b/a ST. JOSEPH
MEDICAL CENTER OF FORT WAYNE

BY: Stanley Abramowski

Stanley A. Abramowski, Jr.,
Executive Director

pedestrian mall concept:

- [illegible]



ite Plan

• 1.2

STATE OF INDIANA)
)SS:
COUNTY OF ALLEN)

PETITION TO VACATE BERRY STREET RUNNING
FROM BROADWAY ON THE EAST TO VAN BUREN
STREET ON THE WEST WHICH PUBLIC STREET
IS IN THE CITY OF FORT WAYNE, INDIANA.

TO: THE CITY PLAN COMMISSION
CITY OF FORT WAYNE, INDIANA

The undersigned petitioner(s) do hereby respectfully
petition the Fort Wayne City Plan Commission to vacate
the following portion of a public street within the City of
Fort Wayne, Indiana, and hereby described as follows:

A public street, known as Berry Street, running
from Broadway on the east to Van Buren Street
on the west, which said public street is in
the City of Fort Wayne, Indiana, being in
Rockhill's Amended Addition, Fort Wayne, Allen
County, Indiana;

In support thereof, your petitioner(s) would represent
as follows:

1. That they are the owners of the real estate abut-
ting both sides of said street.
2. That said street is not necessary as ingress or
egress to other properties whatsoever.
3. That the maintenance of said street is not necessary
or advantageous to the growth of the City of Fort Wayne,
and that it would be to the best interest of the City and
the citizens thereof that said portion herein sought to be
vacated be vacated.

Your petitioner(s) file this petition pursuant to the
authority granted in Indiana Code, Section 18-7-5-46, in
order to complete the vacation as above described.

WHEREFORE, your petitioner prays that the above described street be vacated according to the provisions of the Indiana Law pertaining thereto.

DATED THIS 26th day of February, 1979.

ST. JOSEPH'S HOSPITAL OF FORT WAYNE, INC.

By Sister M. Kathleen Quinn
Sister M. Kathleen Quinn,
Administrator
700 Broadway
Fort Wayne, In. 46802

RESOLUTION 76-140-4

WHEREAS, ST. JOSEPH HOSPITAL OF FORT WAYNE, INC., d/b/a/ ST. JOSEPH'S MEDICAL CENTER OF FORT WAYNE OF FORT WAYNE, has petitioned and requested the Fort Wayne City Plan Commission to hold a public hearing upon the vacation of the following portion of street situated in Fort Wayne, Allen County, to-wit:

A public street, known as Berry Street, running from Broadway on the east to Van Buren street on the west, which said public street is in the City of Fort Wayne, Indiana, being in Rockhill's Amended Addition, Fort Wayne, Allen County, Indiana

all in accordance with the terms of Section 44, Chapter 174 of the Acts of 1947, of the General Assembly of the State of Indiana, as amended by Section 3 of Chapter 385 of the Acts of the General Assembly of the State of Indiana, Indiana Code Section 36-7-4-512; and,

WHEREAS, notice of such public hearing has been given by due and proper publication thereof;

WHEREAS, said vacation of dedicated portion of street has been routed through the following departments: Street Engineering, Traffic Engineering, Water Pollution Control Engineering, Electrical Engineering, Park Board and through the Pubilc Utility Companies.

NOW THEREFORE, BE IT RESOLVED by the Fort Wayne Board of Public Works that the vacation of said dedicated portion of street hereinbefore described conforms to the general policy and pattern of development set out in the Master Plan of the City of Fort Wayne, Indiana.

BE IT FURTHER RESOLVED by the Board of Public Works that the vacation of said dedicated portion of street hereinbefore described be and the same is hereby approved subject to easements as required by all public utilities occupying and using said portion of public street or part thereof for the vacation and operation of its utility facilities shall not be deprived of said use on account of these proceedings unless any said utilities shall file a written consent to said vacation.

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

I, Baron R. Biederman, Acting Director of the Board of Public Works, do hereby certify that attached hereto is a full, true and correct copy of a resolution adopted by the Fort Wayne Board of Public Works at their meeting held October 29, 1986 and as same appears of record in the official records of the Board of Public Works

DATED THIS 29th DAY OF (October) 1986

FORT WAYNE BOARD OF PUBLIC WORKS

Baron R. Biedenweg
Director of Public Works

Cosette R. Simon
Director of Administration & Finance

Lawrence D. Consalvos
Director of Public Safety

RESOLUTION

WHEREAS, ST. JOSEPH HOSPITAL OF FORT WAYNE, INC., d/b/a/ ST. JOSEPH'S MEDICAL CENTER OF FORT WAYNE OF FORT WAYNE, has petitioned and requested the Fort Wayne City Plan Commission to hold a public hearing upon the vacation of the following portion of street situated in Fort Wayne, Allen County, to-wit:

A public street, known as Berry Street, running from Broadway on the east to Van Buren street on the west, which said public street is in the City of Fort Wayne, Indiana, being in Rockhill's Amended Addition, Fort Wayne, Allen County, Indiana

all in accordance with the terms of Section 44, Chapter 174 of the Acts of 1947, of the General Assembly of the State of Indiana, as amended by Section 3 of Chapter 385 of the Acts of the General Assembly of the State of Indiana, Indiana Code Section 36-7-4-512; and,

WHEREAS, notice of such public hearing has been given by due and proper publication thereof; and,

WHEREAS, said public hearing was held on February 24, 1986 at 7:00 P.M. and at such hearing there were no objections of any kind or character which should prevent the vacation of said dedicated portion of street.

WHEREAS, said vacation of dedicated portion of street has been routed through the following departments: Street Engineering, Traffic Engineering, Water Engineering, Water Pollution Control Engineering, Street Light Engineering, Park Board and through the Public Utility Companies.

NOW THEREFORE, BE IT RESOLVED by the Fort Wayne City Plan Commission that the vacation of said dedicated portion of street hereinbefore described conforms to the general policy pattern of development set out in the Master Plan of the City of Fort Wayne, Indiana;

BE IT FURTHER RESOLVED by the Fort Wayne City Plan Commission that the vacation of said dedicated portion of street hereinbefore described be and the same is hereby approved.

BE IT FURTHER RESOLVED no public utility occupying and using said dedicated portion of street or part thereof for the vacation and operation of its utility facilities shall be deprived of said use on account of these proceedings unless any said utility shall file a written consent to said vacation.

BE IT FURTHER RESOLVED that the action of the Fort Wayne City Plan Commission be forwarded to the proper governing body having jurisdiction of the vacation of said dedicated portion of street in Allen County, Indiana.

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

I, Melvin O. Smith, Secretary of the Fort Wayne City Plan Commission, do hereby certify that attached is a full true and correct copy of a resolution adopted by the Fort Wayne City Plan Commission following a public hearing of said Commission held 24 March 1986, and as the same appears of record in the official records of said Plan Commission.

DATED THIS²⁴ DAY OF October 1986

FORT WAYNE CITY PLAN COMMISSION

Melvin O. Smith, Secretary

BILL NO. G-79-08-18

REPORT OF THE COMMITTEE ON REGULATIONS

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS
REFERRED AN (ORDINANCE) (~~RESOLUTION~~) de amending General Ordinance
No. G-87 by authorizing ~~and~~ vacation of a portion of Berry Street

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION AND BEG
LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE)
(~~RESOLUTION~~)

YES

NO

BEN A. EISBART
CHAIRMAN

JANET G. BRADBURY
VICE CHAIRWOMAN

SAM TALARICO
DONALD J. SCHMIDT

MARK GARVINTA

THOMAS C. HENRY

A. MIKE BURNS

CHARLES B. REDD

CONCURRED IN JK

JIMMY STERN

CHARLES B. REDD

SANDRA E. KENNEDY
CITY CLERK

RECEIPT

Date March 28 1972 No. **10740**

Received From John Jones

Address John Jones

700 Dollars \$ 50.00

For Ray H. Location filing fee

ACCOUNT			HOW PAID		
AMT. OF ACCOUNT	50	00	CASH		
AMT. PAID	50	00	CHECK	#10132	
BALANCE DUE	—		MONEY ORDER		

By Ray Jones



The City of Fort Wayne

November 5, 1986

Ms. Cynthia Wilkens
Fort Wayne Newspapers, Inc.
600 West Main Street
Fort Wayne, In 46802

Dear Ms. Wilkens:

Please give the attached full coverage on the date of November 8, 1986, in both the News Sentinel and Journal Gazette.

RE: Legal Notice for Common Council
of Fort Wayne, IN

Bill No. G-79-08-18
Vacation of a street

Please send us 4 copies of the Publisher's Affidavit from both newspapers.

Thank you.

Sincerely yours,

Sandra E. Kennedy
City Clerk

SEK/ne
ENCL: 1

NOTICE OF PUBLIC HEARING
FORT WAYNE COMMON COUNCIL
BILL NO. G-79-08-18

Berry Street between Broadway and Van Buren Street -- In order to convert this portion of street into a park like setting to enhance the hospital.

Notice is hereby give that the Fort Wayne Common Council of the City of Fort Wayne, will conduct a public hearing on Tuesday, November 25, 1986, at 7:00 P.M., (EST), City-County Building, One Main Street, Fort Wayne, Indiana, more particularly described as follows:

VACATION OF A PORTION OF BERRY STREET

A public street, known as Berry Street, running from Broadway on the east to VAn Buren Street on the west, which said public street is in the City of Fort Wayne, Indiana, being in Rockhill's Amended Addition, Fort Wayne, Allen County, Indiana.

All interested parties are invited to appear and be heard.

Fort Wayne Common Council

Sandra E. Kennedy
Sandra E. Kennedy
City Clerk

Agent: Russell Long / St. Joseph Hospital / 700 Broadway / City 02

West Central Neighborhood Association
Phylliss Hummer, Pres
1210 W. Wayne Street 02

Harris
717 Broadway
Fort Wayne, IN 02

Bledsoe
721 Broadway
Fort Wayne, IN 02

Johnson
811 Broadway
Fort Wayne, IN 02

Robach
813 Broadway
Fort Wayne, IN 02

Baltes
821 Broadway
Fort Wayne, IN 02

Basile
915 Broadway
Fort Wayne, IN 02

Dennison
917 Broadway
Fort Wayne, IN 02

Harold's Carburetor Ser.
920 Broadway
Fort Wayne, IN 02

~~Oriental Garden~~
~~927 Broadway~~
~~Fort Wayne, IN 02~~

Lassus Bros
702 Van Buren St
Fort Wayne, IN 02

Reber
712 Van Buren St
Fort Wayne, IN 02

Koher Adv
906 Van Buren St
Fort Wayne, IN 02

Schultz & Conklin
806 Van Buren St
Fort Wayne, IN 02

NOTICE OF PUBLIC HEARING

You are hereby notified that the Fort Wayne City Plan Commission will conduct a public hearing on Monday, February 24, 1986 at 7:00 P.M. in Room #126, City-County Building, One Main Street, Fort Wayne, Indiana on the following proposed vacation of public right-of-way.

1. VACATION OF A PORTION OF A STREET

A public street, known as Berry Street, running from Broadway on the east to Van Buren Street on the west, which said public street is in the City of Fort Wayne, Indiana, being in Rockhill's Amended Addition, Fort Wayne, Allen County, Indiana.

2. VACATION OF A PORTION OF A STREET

A tract of land beginning at the northwest corner of Lot Number 37 in Curdes Homewood Acres Addition; thence north 33 feet to the southwest corner of Lot Number 38 in Curdes Homewood Acres Addition; thence east a distance of 1,058.2 feet along the south line of Lots Number 38, 41, 42, 43, 44, 45, 46 and 7 in Curdes Homewood Acres Addition to the southeast corner of Lot Number 7; thence south 33 feet to the northeast corner of Lot Number 28 in Curdes Homewood Acres Addition; thence west a distance of 661.0 feet along the north property line of Lots Numbered 28, 29, 30, 31, and 32; thence south along the west property line of Lot Numbered 32 a distance of 8.5 feet; thence west a distance of 247.2 feet along the north line of Lots Number 33, 34 and the east 47.2 feet of Lot Numbered 37; thence north parallel to the west line of Lot Numbered 34 a distance of 8.5 feet; thence west a distance of 150 feet along the north line of Lot Numbered 37 to the point of beginning containing .84 acres more or less, known as Columbia Avenue, Fort Wayne, Indiana

All interested persons are invited to appear and be heard.

FORT WAYNE CITY PLAN COMMISSION

Melvin O. Smith, Secretary

November 5, 1986

NOTICE OF PUBLIC HEARING ON BILL NO. G-79-08-18

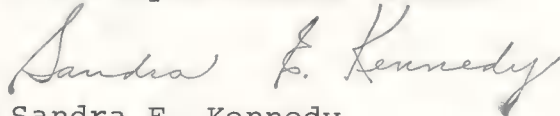
You are hereby notified that the Common Council of Fort Wayne will conduct a public hearing on Tuesday, November 25, 1986, at 7:00 P.M., (EST) in the Council Conference Room 128, 1st Floor, City-County Building, One Main Street, Fort Wayne, Indiana, on the following:

VACATION OF A PORTION OF BERRY STREET

a public street, known as Berry Street, running from Broadway on the east to Van Buren Street on the west, which said public street is in the City of Fort Wayne, Indiana, being in Rockhill's Amended Addition, Fort Wayne, Allen County, Indiana.

All interested persons are invited to appear and be heard. Any written material may be submitted to the Common Council prior to the hearing.

Fort Wayne Common Council



Sandra E. Kennedy
City Clerk

TONYA HENSLEY
723 UNION ST
FT WAYNE IN 46802 26AM

Western
Union Mailgram



4-003608S330 11/26/86 ICS IPMBNGZ CSP SNBC
2194262324 MGMB TDBN FT WAYNE IN 81 11-26 0925A EST

FT WAYNE CITY COUNCIL
CITY COUNTY BUILDING
FT WAYNE IN 46801

A YES VOTE TO CLOSE PART OF WEST BERRY FOR THE BENEFIT OF ST JOSEPH
MEDICAL CENTER, CONTINUES A PRACTICE OF POLITICS IN FAVOR OF SPECIAL
INTEREST GROUPS. LET THE MEDICAL CENTER DEAL WITH THIS SITUATION AS
ANY OTHER INDIVIDUAL OR GROUP MUST. IF THEY WANT THE LAND, LET THEM
BUY IT AT PRIME REAL ESTATE RATES. VOTE NO AS WRITTEN.

BOB HURD
723 UNION ST
FT WAYNE IN 46802

09:25 EST

MGMCOMP



The City of Fort Wayne

December 1, 1986

Members of the Common Council
of the City of Fort Wayne, Indiana
One Main Street
Fort Wayne, Indiana 46802

Re: Vacation of Berry Street
Bill No. G-79-08-18

Gentlemen and Mrs. Bradbury:

Questions have been raised by certain members of the Common Council concerning the validity of an Agreement entered into between the City of Fort Wayne, Indiana, by and through its Board of Public Works and Safety, and St. Joseph's Hospital of Fort Wayne, Inc., d/b/a St. Joseph Medical Center, Fort Wayne. This letter will hopefully clarify this Agreement and answer the questions which have been presented.

Attached to this letter is a copy of the Agreement referred to above. This Agreement contains five main points.

First, the Agreement and the Ordinance provide for a vacation of the street. That is, this is not a contingent or conditional closing of the street but does constitute a statutory vacation of Berry Street. As will be seen later, there are provisions in the Agreement which allow the City to retake the street but said rights in the City do not change the fact that the vacation is complete. Notwithstanding the vacation, the parties to the Agreement have made the other agreements as herein explained.

Second, the City has authorized St. Joseph Medical Center to make improvements as indicated on the Exhibit to the Agreement. The estimated cost of these improvements is \$150,000.00. The Medical Center indemnifies the City from any and all liability occasioned by or resulting from the construction of the improvements on the street.

Third, the parties have agreed that the street vacation will be for a limited term of years, namely, twenty-five years from the date the vacation Ordinance is approved. At the expiration of

An Equal Opportunity Employer

One Main Street, Fort Wayne, Indiana 46802

Members of the Common Council
of the City of Fort Wayne, Indiana
December 1, 1986
Page Two

twenty-five years, the City will once again own the street and the City may open the street if it so desires. Additionally, the City has the right under the Agreement to take back the property at any time so long as the City compensates the Medical Center for the improvements made by the Medical Center. The Agreement provides that if the City retakes the property within the first year, the compensation to the Medical Center will be \$150,000.00 with said compensation being reduced by \$6,000.00 for each additional year that the Medical Center owns the property. Under State law, if this Agreement did not provide for the City's reacquisition of the street, the City would have to enter into condemnation proceedings, have the real estate and improvements appraised, and pay the average of the appraised prices. By agreeing beforehand to these matters, the City will save the expense of condemnation action if the City desires to take back the property within the twenty-five year period, and at the end of twenty-five years will not have to take any action to get the street back.

Fourth, the Medical Center has agreed that the improvements to the street shall be such that they will not limit City emergency and other emergency vehicles from having access to the Medical Center and any other contiguous facilities in the event of an emergency at the Medical Center. This was a specific requirement of the Plan Commission in granting its conditional approval. The Minutes of the Plan Commission meeting at which conditional approval was granted, provide that the existing street should be closed except for emergency vehicles and that the closure would be a conditional right-of-way encroachment reversible by the Board of Works at any time. The Minutes specifically state that the language "conditional right-of-way encroachment" is not a specific requirement but a form of direction to the parties to reach the agreement which was reached.

Fifth, the Medical Center has agreed to provide all utility easements, including pedestrian easement and must provide the utility access be unencumbered. This will allow the City Utilities, or other utilities, to enter onto the premises as necessary to make repairs or improvements without being liable to the Medical Center for damage to the improvements made by the Medical Center.

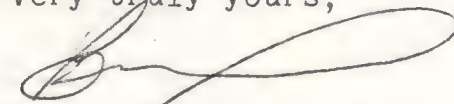
The City Attorney's office participated in the negotiation of this Agreement and is satisfied as to its form and legality.

Members of the Common Council
of the City of Fort Wayne, Indiana
December 1, 1986
Page Three

There are several statutory provision which allow the Board of Public Works and Safety and the City to vacate streets, regulate the use of public ways, provide for improvements or repairs to streets, alleys and other public places, such improvements including specifically "pedestrian ways or malls set aside entirely or partly, or during restricted hours, for pedestrian rather than vehicular traffic."

Finally, there has been some question concerning the enforceability of the Agreement. The Agreement has been approved by the Board of Public Works and Safety, by the Board of Directors of the St. Joseph Medical Center, and upon approval by the Common Council and the Mayor, will be a binding and valid obligation enforceable in accordance with its terms against the Medical Center. The Agreement does not have to be recorded in the Recorder's Office to make it enforceable. The vacation Ordinance itself is required by law to be recorded in the Recorder's Office and will put people on notice of the proceedings. Therefore, it is unnecessary to record the Agreement between the City and the Medical Center.

Very truly yours,



Bruce O. Boxberger
City Attorney (Corporate Counsel)
City of Fort Wayne, Indiana

BOB:ls

AGREEMENT

THIS AGREEMENT, made and entered into this 22nd day of October, 1986, by and between the CITY OF FORT WAYNE, INDIANA, by and through its BOARD OF PUBLIC WORKS AND SAFETY ("City"), and ST. JOSEPH'S HOSPITAL OF FORT WAYNE, INC., d/b/a ST. JOSEPH MEDICAL CENTER OF FORT WAYNE ("Medical Center"),

W I T N E S S E T H :

WHEREAS, the Medical Center has requested that the City vacate a portion of Berry Street, bounded on the east by Broadway Street and bounded on the west by Van Buren Street ("Property"); and

WHEREAS, vacation approval has been granted or will be granted, subject to the City and the Medical Center entering into an agreement, with respect to the closure of the Property; the construction of improvements thereon; and other conditions regarding same; and

WHEREAS, the parties desire to enter into this Agreement to clarify and memorialize the understanding between them respectively.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. Once the vacation request, as made by the Medical Center has been approved, that portion of Berry Street bounded by Broadway Street on the east and Van Buren Street on the west, as so indicated in the Petition for Vacation, shall be closed subject to the terms and conditions of this Agreement. That is, even though the appropriate portion of Berry Street (Property) shall be deemed to be vacated, such vacation and the Medical Center's right with respect to such Property, shall be subject to all of the provisions hereof.

2. The Medical Center is authorized to make improvements consistent with those as indicated on the attached Exhibit "A", made a part hereof. The cost of such improvements and the maintenance of same shall be the sole responsibility of the Medical Center. The Medical Center does hereby agree to indemnify and hold harmless the City and all of its employees, departments, boards and commissions, from and against any liability of any kind or character, including but not limited to injury to person, damage to property and attorneys' fees, occasioned by or resulting from the construction and maintenance of the improvements and the use of the Property. The Medical Center shall maintain general liability insurance in the primary amount of not less than One Million Dollars (\$1,000,000.00). The City may request, from time to time, certificates of insurance evidencing such coverage.

3. The closed portion of Berry Street shall be closed to the public, as a vacated street, for a period of twenty-five (25) years from the date the vacation petition has received final legal approval. Upon the expiration of the twenty-five (25) years, all rights to the street shall revert to the City and the street may be opened if the City so desires. In addition, the City may terminate the closure within the twenty-five (25) years, if same is determined to be in the City's best interest. If such earlier termination occurs, the City shall reimburse the Medical Center for improvements made, with the City's payment being in the first year (if a termination is made in the first year) of One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00). The reimbursement shall be reduced by Six Thousand and no/100 Dollars (\$6,000.00) each year that the Agreement is not terminated. Thus and by way of example, if the Agreement is terminated after five (5) years, the City's payment to the Medical Center would be One Hundred Twenty Thousand and no/100 Dollars (\$120,000.00).

4. The Medical Center's use of the Property and the closure of that portion of Berry Street shall not limit City emergency and other emergency vehicle access to the Medical

Center and any other contiguous facility of the Medical Center, in the event of an emergency at the Medical Center or such contiguous facility of the Medical Center.

5. The Medical Center shall provide all necessary utility easements, including a pedestrian easement and, utility access shall be unencumbered.

6. This Agreement shall be subject to the laws of the State of Indiana and shall be binding upon all successors and assigns.

IN WITNESS WHEREOF, this Agreement has been signed the day, month and year first above written.

CITY OF FORT WAYNE, INDIANA
by its BOARD OF PUBLIC WORKS
AND SAFETY

BY: James Haley

BY: Arthur R. Inge

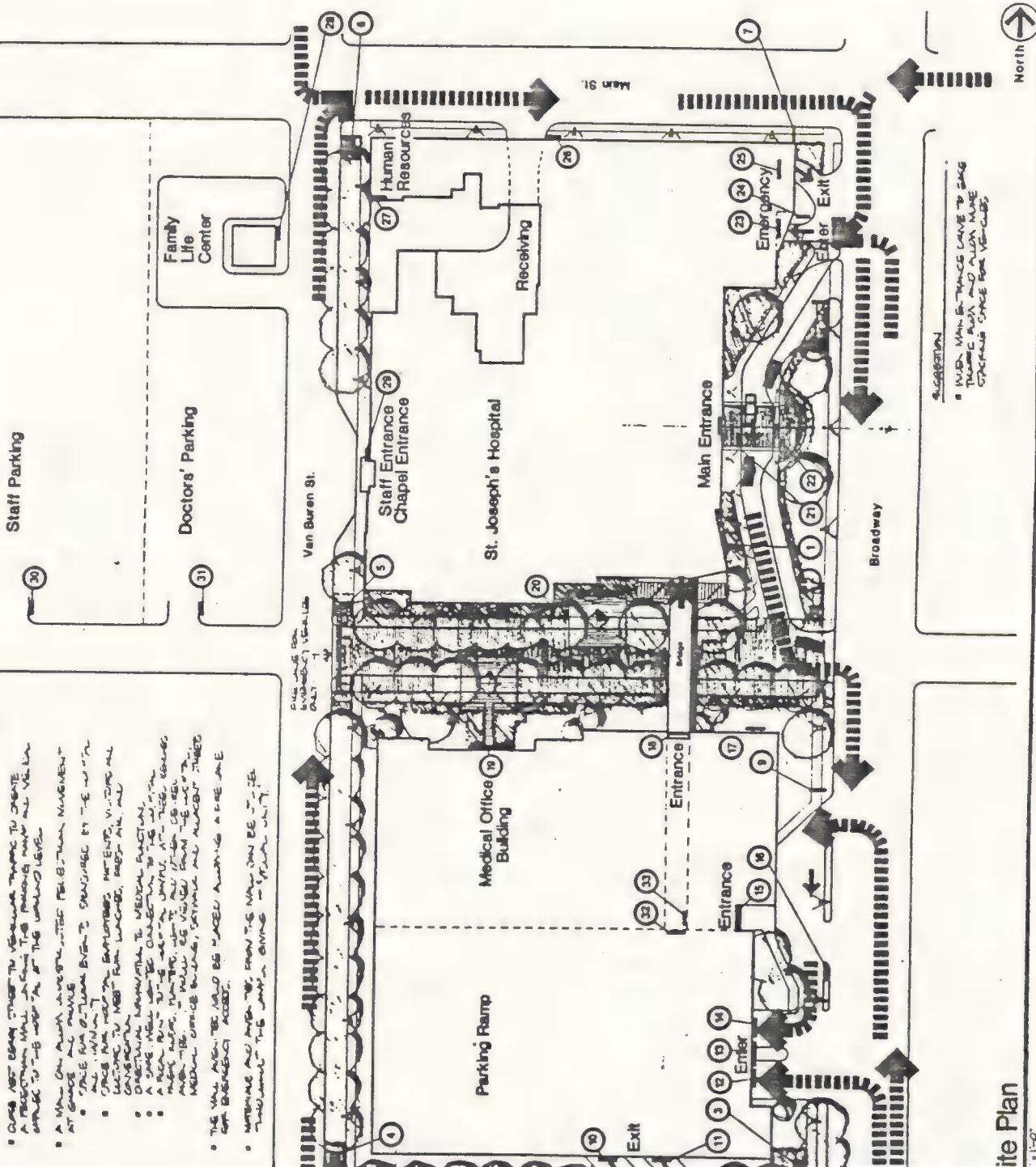
BY: J.D. Cassel

ST. JOSEPH'S HOSPITAL OF FORT
WAYNE INC., d/b/a ST. JOSEPH
MEDICAL CENTER OF FORT WAYNE

BY: Stanley A. Abramowski
Stanley A. Abramowski, Jr.,
Executive Director

pedestrian mall concept:

- [illegible]



Write Plan

December 2, 1986

TO: Samuel J. Talarico, President, Common Council
FROM: Stanley A. Levine, Legal Advisor
SUBJECT: Reconsideration of G-79-08-18 (Berry St. Vacation)

Upon final passage of this ordinance, Councilperson Bradbury made a MOTION TO RECONSIDER AND ENTER ON THE MINUTES, which motion was duly seconded. This unique motion has as its object that it cannot be called up and voted upon on the same day that the vote to be reconsidered was taken.

Since this was a rather unusual motion, I attempted to respond to that specific motion by reading the material on it in Roberts Rules of Order. This task was made somewhat difficult by the fact that multiple questions were being asked of me concerning that motion and the Code sections on reconsideration; and the further fact that at least one member of Council was trying to take a copy of Roberts from me for independent research. Quite honestly, I should have asked for a few minutes recess to research the question by myself. If I had taken the time, I would have reached the conclusions set out below.

While the motion that she made was a unique and correct parliamentary motion under Roberts, I find that it was superfluous and unnecessary because of ample provisions in Section 2-24 of the Municipal Code on Reconsideration.

This section provides that after a question has been decided, a member of Council who voted with the majority, may move for reconsideration at the same meeting or at the next regular meeting. In the latter case, no such motion shall be

introduced at the next regular scheduled meeting unless the member intending to make the motion shall have first given written notice of such intention at the meeting at which he/she desired to have reconsidered was taken. The giving of this written notice of her intention to ask for reconsideration of the above ordinance at the next regular meeting would have accomplished the same purpose that the motion she made did.... to delay reconsideration to the next meeting.

The existence of the procedure in Section 2-24 to do this is significant because Section 2-19 provides that procedural rules found in the Code take precedence over Roberts.

In other words, according to Section 2-19, since procedure for reconsideration at the next meeting is covered by Section 2-24, the rules to accomplish that, and not Roberts, govern.

I am not suggesting that Councilperson Bradbury's MOTION be ruled out of order. I AM suggesting that since the procedure in Section 2-24 provide a method of accomplishing what she desired (a vote on reconsideration at the next meeting), that the MOTION TO RECONSIDER AND ENTER ON THE MINUTES was unnecessary to use for that purpose. Hence, in the future such a motion should not be in order.

Section 2-22(g) specifically provides that a motion to reconsider is debatable.

The present MOTION TO RECONSIDER AND ENTER ON THE MINUTES should be considered in accordance with parliamentary procedure at the Special Session called for that purpose pursuant to call, consent and waiver, and would be debatable under Roberts.

I would like to add, for future reference, that my experience last Tuesday suggest that the Legal Advisor should sit next to the President at the formal session as well as at committee sessions.

I have called Bob Leiman of A.I.P. and he concurs with the above.

If you have any questions, please let me know.

Stanley A. Levine
Common Council Attorney

Fort Wayne Common Council

(Governmental Unit)

Allen

County, IN

To JOURNAL-GAZETTE Dr.
P.O. BOX 100
FORT WAYNE, INDIANA

PUBLISHER'S CLAIM

LINE COUNT

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) - number of equivalent lines

Head number of lines

Body number of lines

Tail number of lines

Total number of lines in notice

3

17

3

23

COMPUTATION OF CHARGES

23 lines, 1 columns wide equals 23 equivalent lines at .300¢ \$ 6.90
cents per line

Additional charge for notices containing rule or tabular work (50 per cent of above amount)

Charge for extra proofs of publication (50 cents for each proof in excess of two) 2 extra 1.00

TOTAL AMOUNT OF CLAIM

\$ 7.90

DATA FOR COMPUTING COST

Width of single column 12.5 picas

Size of type 6 point

Number of insertions 1

Size of quad upon which type is cast 6

Pursuant to the provision and penalties of Ch. 89, Acts 1967.

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Date Nov. 8 19 86

Title CLERK

FORM #904

PUBLISHER'S AFFIDAVIT

State of Indiana
ALLEN County SS:

Personally appeared before me, a notary public in and for said county and state, the undersigned Drusilla Roose

that he/she is CLERK of the

JOURNAL-GAZETTE

a DAILY newspaper of general circulation printed and published

in the English language in the city of FORT WAYNE, INDIANA

in state and county aforesaid, and that the printed matter attached hereto is a true copy.

which was duly published in said paper for one time the dates of publication being as follows:

11/8/86

Subscribed and sworn to me before this 8th day of November 19 86

Shelley R. LaRue Notary Public

March 3, 1990

My commission expires

NOTICE OF PUBLIC HEARING
FORT WAYNE COMMON COUNCIL
BILL NO. G-79-08-18
Berry Street between Broadway and Van Buren Street -- In order to convert this portion of street into a park-like setting to enhance the hospital.
Notice is hereby given that the Fort Wayne Common Council of the City of Fort Wayne, will conduct a public hearing on Tuesday, November 25, 1986, at 7:00 P.M., (EST), City-County Building, One Main Street, Fort Wayne, Indiana, more particularly described as follows:
VACATION OF A PORTION OF BERRY STREET
A public street, known as Berry Street, running from Broadway on the east to Van Buren Street on the west, which said public street is in the City of Fort Wayne, Indiana, being in Rockhill's Amended Addition, Fort Wayne, Allen County, Indiana.
All interested parties are invited to appear and be heard.
Fort Wayne Common Council
Sandra E. Kennedy
City Clerk

Fort Wayne Common Council

(Governmental Unit)

Allen

County, IN

To NEW-SENTINEL Dr.
P.O. BOX 100
FORT WAYNE, INDIANA

PUBLISHER'S CLAIM

LINE COUNT

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) - number of equivalent lines

Head number of lines

3

Body number of lines

17

Tail number of lines

3

Total number of lines in notice

23

COMPUTATION OF CHARGES

23 lines, 1 columns wide equals 23 equivalent lines at .300¢ \$ 6.90
cents per line

Additional charge for notices containing rule or tabular work (50 per cent of above amount)

Charge for extra proofs of publication (50 cents for each proof in excess of two) 2 extra 1.00

TOTAL AMOUNT OF CLAIM

\$ 7.90

DATA FOR COMPUTING COST

Width of single column 12.5 picas

Size of type 6 pointNumber of insertions 1Size of quad upon which type is cast 6

Pursuant to the provision and penalties of Ch. 89., Acts 1967.

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Date Nov. 8, 19 86Title CLERK

FORM #903

PUBLISHER'S AFFIDAVIT

State of Indiana
ALLEN County SS:Personally appeared before me, a notary public in and for said county and state, the undersigned Drusilla Roosethat he/she is CLERK of theNEWS-SENTINELa DAILY newspaper of general circulation printed and publishedin the English language in the city of FORT WAYNE, INDIANAin state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for one time, the dates of publication being

as follows:

11/8/86Subscribed and sworn to me before this 8th day of November, 19 86Shelley R. LaRue
Notary PublicMy commission expires March 3, 1990NOTICE OF PUBLIC HEARING
FORT WAYNE COMMON COUNCIL
BILL NO. G-79-08-18

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